

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

November 14, 2001

**REPORT TO THE HONORABLE MAYOR
AND CITY COUNCIL**

**PROPOSED CHARTER AMENDMENT PERTAINING TO A SUPER MAJORITY
VOTE/ITEM 151 ON THE NOVEMBER 19, 2001, CITY COUNCIL DOCKET**

INTRODUCTION

At its meeting on November 7, 2001, the Rules Committee voted to recommend placing a charter amendment pertaining to a "Super Majority Vote" on the March 5, 2002, ballot. The proposed charter amendment would require a two-thirds vote of the electorate for the adoption of any matter which itself would require a two-thirds vote of the electorate and would be applicable to any measure appearing on the same or future ballots. The ordinance containing the proposed charter amendment is on the November 19, 2001, docket as Item 151 for the Council's consideration and potential adoption.

BACKGROUND

At its meeting on September 26, 2001, the Rules Committees asked the City Attorney to report back on a potential amendment to the City Charter which would require a two-thirds vote of the electorate for the adoption of any matter which itself would require a two-thirds vote of the electorate. The proposed charter amendment language was prepared and the legal issues surrounding it were analyzed in a City Attorney's Report to the Rules Committee dated October 8, 2001. A copy of that Report is attached.

One of the key issues raised by the proposed "Super Majority Vote" charter amendment was the effect its passage would have on an initiative measure appearing on the same ballot, namely, "The San Diego Taxpayers Protection Act of 2000" [General Tax Initiative]. The General Tax Initiative is a proposed charter amendment requiring a two-thirds vote of the electorate to impose or increase any general tax.

Summarizing the lengthy analysis appearing in the City Attorney's October 8th Report, the rule is that the intent of the electorate controls the effectiveness of propositions that are on the same subject or that conflict. If the voters' intent can be readily ascertained, their intent shall control.

ANALYSIS

With that rule in mind, the City Attorney prepared a proposed Charter amendment for submission to the City's voters at the March 5, 2002, election. See Item 151 on the Council Docket of November 19, 2001, for specific language to be added to the Charter. The question that will be placed before the voters is as follows:

PROPOSITION ____. AMENDS THE CHARTER OF THE CITY OF SAN DIEGO BY ADDING SECTION 226, SUPER MAJORITY VOTE REQUIREMENTS. Shall the City Charter be amended to provide that, in order to be adopted or effective, any Charter amendment, ballot proposal, initiative, statute, law or regulation requiring a greater than simple majority vote of the electorate, and which is proposed to be adopted on or after the date of this election, must be adopted by the same proportionate vote of the electorate?	YES	
	NO	

The City Attorney's Office believes that, if approved by a majority vote of the City's electorate, this Super Majority Vote proposition will establish that City voters clearly intend that the General Tax Initiative is subject to this proposition and requires a two-thirds vote to become effective. Thus, if:

- (1) The General Tax Initiative receives more than fifty percent but less than two-thirds of the votes, and the Super Majority Vote proposition receives more than fifty percent of the votes, only the Super Majority Vote proposition becomes effective and is placed in the Charter and the General Tax Initiative is void (this is true even if the General Tax Initiative receives more votes than the Super Majority Vote proposition); or,
- (2) The General Tax Initiative receives more than two-thirds of the votes, and the Super Majority Vote proposition receives more than fifty percent of the votes, both the General Tax Initiative and the Super Majority Vote propositions become effective and are placed in the Charter; or,

- (3) The General Tax Initiative receives more than fifty percent of the votes, and the Super Majority vote proposition receives less than fifty percent of the votes, the General Tax Initiative becomes effective and is placed in the Charter and the Super Majority Vote proposition does not take effect.

CONCLUSION

The City Charter may be amended to require a two-thirds vote of the electorate for any measure which itself requires a two-thirds vote. In order for such an amendment to apply to a measure appearing on the same ballot, the intent of the electorate to that effect must be readily ascertainable. The draft Charter amendment and ballot question proposed in the ordinance in Item 151 of the November 19, 2001, docket establishes that intent if the proposition is adopted by a majority of the voters.

Respectfully submitted,

/ S /

CASEY GWINN
City Attorney

CCM:vl
Attachment 1
RC-2001-32